**MANONMANI SHANMUGAVELU**

**v.**

**THE GREAT EASTERN LIFE ASSURANCE CO. LTD.**

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING SUMMONS NO. R8-24-3-90]
12 NOVEMBER 1990

***INSURANCE:*** *Beneficiaries named in the policies of insurance - Moneys released to the Official Administrator - Whether moneys should be paid out to named beneficiaries - Whether moneys form part of the deceased's estate - Locus standi - Privity of contract - Civil Law Ordinance 1956, s. 23 - Probate and Administration Act 1959, s. 83 - Insurance Act 1963, s. 44 - Insurance (Payment of Life Policy Moneys) Regulations 1983.*

The plaintiff, M, mother of TN (deceased), is the named beneficiary of a policy of insurance (the first policy) issued by the defendant. Under this policy, the sum assured is to be payable, on the assured's death, to M. The deceased also took out another policy of insurance (the second policy), payable at the end of 25 years from the date of the policy or upon the previous death of the assured. The beneficiaries named in this second policy were the deceased's wife and son.

After the assured's death, both the plaintiff and the deceased's wife claimed the moneys in the two policies. Purporting to act under s. 44 of the Insurance Act 1963, the defendant paid out a portion under the second policy to the wife and son but refused to pay the balance thereof to the wife and likewise refused to pay out the sums due under the first policy to the plaintiff. Later, upon request by the Official Administrator, the defendant released the moneys under the two policies still remaining to the Official Administrator. The plaintiff filed this application against the defendant, asking the Court to determine whether she is entitled to all the moneys payable under the first policy. The defendant raised the issue of *locus standi* of the plaintiff in bringing the action, alleging no privity of contract between M and the defendant.

**Held:**

**[1]** The first policy clearly shows that the defendant had contracted to pay, upon the death of the deceased, the moneys under the first policy to the plaintiff as being the only beneficiary named by the deceased. No statutory provision had been shown to the Court which would prevent the defendant from paying out the money to the plaintiff; nor was fraud or misrepresentation pleaded by the defendant. Although the plaintiff was not a party to the contract, she was certainly privy to the consideration and as such has a claim on the money and is entitled to sue the defendant for its payment.

**[2]** As far as the wife and child of the deceased are concerned, by virtue of s. 23 of the Civil Law Ordinance 1956, the moneys payable under the second policy do not form part of the deceased's estate. As such, the Official Administrator committed an error when he requested for this money to be paid to him for distribution under s. 83 of the Probate and Administration Act.

**[3]** Section 44 of the Insurance Act 1963, a new provision inserted into the Act since 17 February 1983, is intended to facilitate and expedite payment by an insurer to a "proper claimant" without the need for the claimant to first obtain any letters of administration. This section applies where the deceased policy owner had not appointed and named any

beneficiary in the policy to receive the policy money upon his death in which case the policy money would go to his estate, or he had specifically stated in the policy that the money should go to his estate when he died. In that event the insurer is authorised by this section to pay out the policy money to a "proper claimant" as described in s. 44(5) of the said Act.

**[4]** As the moneys payable by the defendant under the two policies had been deposited with the Official Administrator, they should be refunded to the defendant for payments to the beneficiaries named in the policies.

*[Order accordingly.]*

**Cases referred to:**
*Kepong Prospecting Ltd. & Ors. v. Schmidt [1968] 1 MLJ 170*
*G.R. Nair & Anor. v. Eastern Mining & Metals Co. Sdn. Bhd. [1974] 1 MLJ 176*
*Cleaver & Ors. v. Mutual Reserve Fund Life Association [1892] 1 QB 147*
*Re Clay's Policy of Assurance, Clay v. Earnshaw [1937] 2 All ER 548*
*Re Schebsman [1943] Ch 366*
*Re Man bin Mihat (deceased) [1965] 2 MLJ 1*
*Re Sinclair's Life Policy (1938) 1 Ch D 799*

**Legislation referred to:**
Civil Law Act 1956, s. 23
Civil Law Ordinance 1956, s. 23
Adoption of Children Act 1926 [UK], s. 11
Law of Property Act 1925 [UK], s. 56
Married Women's Property Act 1882 [UK], s. 11
Estate Duty Enactment 1941, s. 50(ii)
Estate Duty Ordinance of Sabah, s. 35(1)
Insurance Act 1963, ss. 44, (5)
Insurance (Payment of Life Policy Moneys) Regulations 1983, reg. 2
Probate and Administration Act 1959, s. 83

**Other source referred to:**
*MacGillivray & Parkington on Insurance Law*, at para. 1290(b) at p. 539

*For the plaintiff - R.K. Nathan; M/s. R.K. Nathan & Co.*
*For the defendant - N. Nadkarni; M/s. Skrine & Co.*

**JUDGMENT**

**Eusoff Chin J:**

The plaintiff is the mother of Thillai Nathan s/o K. Shanmugavelu (deceased) who died on 20 November 1988. The deceased had married Chin Ah Moi, on 27 August 1983, and they had a son Ravin Chin s/o Thillai Nathan.

After his marriage, the deceased took from the defendant two insurance policies on his life. One is policy No. 847798-2. It is a whole life assurance with profits. The date of commencement of the policy was 12 February 1984. The sum assured would only be payable upon the death of the deceased. He appointed and named the beneficiary to receive the sum assured "S. Manonmani, mother of the assured" that is the plaintiff.

The other policy is No. 5040459-4. It was a life policy on the life of the deceased, commencing on 18 January 1986. The sum assured would become payable at the end of 25 years from the date of commencement or upon the previous death of the assured. The beneficiaries named in this policy were Chin Ah Moi (deceased's wife) and Ravin Chin (deceased's son).

Each of these policies states that "the Policy and the proposal therefore with any special provisions/endorsements made by the company taken together constitute the entire contract...".

After the deceased's death, the wife and the mother of the deceased claimed the insurance moneys in the two policies. The money payable to the plaintiff under policy No. 847798-2 was RM57,717.02 and that under policy No. 5040459-4 payable to the wife and child of deceased was RM26,925.89. The defendant purporting to act under s. 44 of the Insurance Act 1963 paid RM12,116.65 to the deceased's wife out off policy No. 5040459-4. The defendant refused to pay the balance of the amount under this policy to the widow of the deceased, and the sums due under the other policy to the plaintiff. The defendant insisted that payment would only be made to the legal personal representative upon the production of letters of administration of the estate of the deceased. Later, upon request by the Official Administrator, the defendant paid the moneys under the two policies still remaining with the defendant, to the Official Administrator. The Official Administrator had purportedly acted under s. 83 of the Probate and Administration Act 1959, when he requested the defendant to pay the moneys under the two insurance policies to him.

The plaintiff, not having received anything under the deceased's life policy in which she is the named beneficiary, filed an application in the High Court against the defendant, for the determination of the following questions:

(a) Whether the plaintiff, a named beneficiary of Thillai Nathan s/o K. Shanmugavelu (now deceased) under Policy No. 847798 issued by the defendants is the sole beneficiary for all moneys payable under the said policy;

(b) If the determination is in the affirmative then would it follow that all acts by the defendants' refusal to pay the plaintiff the sum of RM57,717.02 (Ringgit Fifty Seven Thousand Seven Hundred and Seventeen and Sen Two) only being the benefits payable under the said policy is unlawful;

(c) If it is the determination of this Honourable Court that the proper person to benefit from the said policy is the plaintiff, then it follows that the payment to be made to the plaintiff forthwith.

Before me, the learned Counsel for the defendant raised the issue of *locus standi* of the plaintiff in bringing this action. He said there was no privity of contract between the plaintiff and the defendant, because the contract i.e. policy No. 847798-2 was made between the deceased and the defendant. He cited:

1. *Kepong Prospecting Ltd. & Ors. v. Schmidt* [1968] 1 MLJ 170. I do not think this case applies here as the facts there are entirely different. There, all the parties were still alive. It concerned two contracts pertaining to services rendered in obtaining prospecting permits and payments of 1% tribute to the appellant on sale of tin-ore.

2. *G.R. Nair & Anor. v. Eastern Mining & Metals Co. Sdn. Bhd.* [1974] 1 MLJ 176. I find this case too is not relevant as it concerns a Group All Sickness Policy taken by an employer (Eastern Mining & Metals Co. Sdn. Bhd.) to insure itself for its own purpose. There was neither an express trust nor a constructive trust in favour of the two appellants (the employees) in the policy taken by the employer.

3. *Cleaver & Ors v. Mutual Reserve Fund Life Association* [1892] 1 QB 147. I also find this case not relevant since this case arose out of the murder of Florence Maybrick of her husband who had effected a policy on his life for her benefit. The case there dealt with s. 11 of the English Married Women's Property Act 1882.

4. *Re Clay's Policy of Assurance, Clay v. Earnshaw* [1937] 2 All ER 548. This case too is irrelevant since it concerns trust created in favour of an adopted child and the laws considered there were the English Adoption of Children Act 1926 and s. 11 of the Married Women's Property Act 1926 and s. 11 of the Married Women's Property Act 1882.

5. In re *Sinclair's Life Policy* [1938] 1 Ch. D 799. This was a life policy taken in favour of the deceased's god son. The law discussed there was s. 56 of the English Law of Property Act 1925, and the Court held that that section could not give the god son a beneficial title to the policy money because the god son was referred to in the policy as a 'nominee'. In the case before me, the plaintiff was expressly named as 'the beneficiary' to receive the policy money.

The learned Counsel for the defendant also read to me a passage in the *MacGillivray & Parkington on Insurance Law*, at para. 1290(b) at p. 539, and it is:

> 1290. (b) Payee. If the policy moneys are made payable to some person other than the assured, that person, being a stranger to the contract and not privy to the consideration, is *prima facie* precluded from suing upon it; and the legal title remains vested in the assured, who alone can afford the company a good legal discharge.

The next paragraph not read to me, however states:

> 1291. However, if it is an essential term of the contract contained in the policy that payment shall be made to a named person and no other, the company is entitled to pay the money to that person notwithstanding any attempt to intercept it or any objection raised by the assured or his representatives, and from this it would seem to follow that the receipt of that person is a sufficient legal discharge to the company. Whether that person is to receive the money beneficially or merely as agent for the assured depends upon the intention of the parties. (*Re Schebsman* [1943] Ch. 366).

The policy No. 847798-2 where the plaintiff is the named beneficiary contains the following clause:

> To Whom Payable:
>
> The company shall pay the moneys hereby assured to the executors...or to the beneficiary named above if then living, ...unless prevented by an assignment or other act or thing done or suffered to be done by the assured in his life time and provided there is no statutory or other restrictions to the contrary. Provided always that the assured may...at any time by writing signed by him and delivered to the company revoke the appointment of the beneficiary named herein and may appoint another beneficiary...

This clearly shows that the defendant had contracted to pay, upon the death of the deceased, the moneys under the policy to the plaintiff as the only beneficiary named by the deceased. I am not shown any statutory provision which would prevent the defendant from paying the money to the plaintiff; nor was fraud or misrepresentation pleaded by the defendant. Therefore, though the plaintiff was not a party to the contract between the deceased and the defendant, she was certainly privy to the consideration, has a claim on the money and is entitled to sue the defendant for its payment to her.

Three provisions of the law had been cited in arguments before me. They are s. 83 of the Probate and Administration Act 1959; Section 23 of the Civil Law Act 1956, and s. 44 of the Insurance Act 1963.

Section 83 of the Probate and Administration Act states:

> 83. (1) Subject to subsection (2) whenever any person dies leaving property in Malaysia and the Official Administrator is satisfied after such investigation as he shall think sufficient:
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> (a) that the total value of the property without deduction for debts, but not including the value of any property which the deceased possessed or was entitled to as trustee and not beneficially, does not exceed three hundred thousand ringgit;
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> (b) that no petition for letters of administration is pending,
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> he may, if in his discretion he thinks fit to do so, by writing signed by him declare that he undertakes to administer the property, and thereupon he shall be empowered to administer it as though letters of administration, with or without the will annexed, of the estate of the deceased person had been granted to him, and his receipt shall be a sufficient discharge to any person who pays any money or delivers any property to him; and notice of every such declaration shall be filed in the proper Registry of the Court.
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> (2)(a) When the Official Administrator is satisfied that the value of any such property as is referred to in subsection (1) does not exceed ten thousand ringgit he may direct that the same or any part thereof be delivered, without letters of administration taken out, to any person or persons on his being satisfied as to the title of the claimant and value of the property by the oath or affirmation of the claimant or by such other evidence as he may require and he may in his discretion take such security as he thinks proper for the due administration of the property or the protection of the rights of any other person.

Section 23 of the Civil Law Act, states:

> 23.(1) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed from part of the estate of the insured or be subject to his or her debts.
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> (2) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid.
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> (3) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment or the moneys payable under any such policy.
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> (4) In default of any such appointment of a trustee the policy immediately on its being effected shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid.
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> (5) If at the time of the death of the insured or at any time afterwards there is no trustee, or it is expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by the High Court.

(6) The receipt of a trustee or trustees duly appointed, or in default of any such appointment or in default of notice to the insurance office the receipt of the legal personal representatives of the insured, shall be a discharge to the office for the sum secured by the policy or for the value thereof in whole or in part.

Section 44 of the Insurance Act states:

44.(1) When a policy owner, in relation to any life policy or life policies, dies and on his death policy moneys are payable under the policy or policies, the insurer may make payment to a proper claimant such sum of the policy moneys as may be prescribed without the production of any probate or letters of administration and the insurer shall be discharged from all liability in respect of the sum paid.

(2) If, in any case mentioned in subsection (1), estate duty is leviable in Malaysia on any such policy moneys, the insurer may withstanding:

(a) s. 50(ii) of the Estate Duty Enactment 1941 of the Federated Malay States; or

(b) s. 35(1) of the Estate Duty Ordinance of Sabah,

pay to a proper claimant such sum as may be prescribed to be paid under subsection (1) without the policy moneys being included in the schedule or certificate mentioned in the sections referred to in paras. (a) and (b):

Provided that before making any payment under this subsection the insurer shall give not less than fourteen days' written notice by registered post to the Collector of Estate Duty which such particulars as he may require.

(3) Subsections (1) and (2) shall also apply to policy moneys under life policies of which the deceased was not the policy owner at his death.

(4) Where a sum is paid under subsection (2) on account of any policy moneys and the policy moneys are not within twelve months after the payment is made, included in the schedule or certificate referred to in subsection (2), the insurer shall deposit the balance with the treasury; but before refunding such balance to the insurer on his application to pay to the person entitled to the balance, the treasury may apply the whole or part of the sum deposited in paying any unpaid estate duty leviable on the death.

(5) In this section, "policy owner" includes a part owner of a policy and "proper claimant" means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased; and in deducing any relationship for the purposes of this subsection an illegitimate person shall be treated as the legitimate child of his actual parents.

Another provision of the law not cited to me is reg. 2 of the Insurance (Payment of Life Policy Moneys) Regulations 1983 PU(A) 292 of 1983 which came into force on 28 July 1983 and which states:

2. An insurer may, in relation to any life policy or life policies issued by the insurer, make the following payment to a proper claimant without the production of probate or letters of administration:

(a) if the policy moneys of all such policies is in the aggregate twenty thousand ringgit or less, the insurer may pay the full sum to the proper claimant;

(b) if the policy moneys of all such policies exceed in the aggregate twenty thousand ringgit, the insurer may pay to the proper claimant sixty thousand ringgit or nine-tenths of the policy moneys whichever is the lesser.

As far as the wife and child of deceased are concerned, it is crystal clear that by virtue of s. 23 of the Civil Law Ordinance 1956, as the policy of assurance was effected by the assured on his own life and expressed to be for the benefit of his wife and child, the moneys payable under the policy does not form part of the estate of the deceased. The money in policy No. 5040459-4 should have been paid out by the defendant to the widow of the deceased. The Official Administrator committed an error when he requested for this money to be paid to him for his distribution under s. 83 of the Probate and Administration Act - See *Re Man bin Mihat (deceased)* [1965] 2 MLJ 1.

The deceased had not left any will. He had expressly appointed and named his mother S. Manomani as the sole beneficiary in his life policy No. 847798-2. The defendant had agreed to pay the insurance moneys under this policy to the beneficiary appointed and named by the deceased. The deceased in his life time never revoked the plaintiff as the sole beneficiary under that policy.

It is true that the interest of the beneficiary (plaintiff) was liable to be defeated by the deceased's revoking the appointment, but this would only result in an interest otherwise vested, becoming divested, but the fact remains that the beneficiary's interest had not been divested and is still subsisting when the deceased died. I also note that the life policy where the plaintiff is appointed and named as the sole beneficiary is a whole life policy which means that the policy money will not be paid to the deceased during his life time. The policy money only became payable upon his death. It is unlike the other policy which is an endowment policy which was for a period of 25 years where, had the deceased survived that period, he would have been able to collect the sum assured.

In my view, since it had been agreed between the defendant and the deceased that the policy was to form a binding contract between them, and that the defendant had agreed to pay the named beneficiary (the plaintiff) the moneys due under the policy on the death of the deceased, the defendant is bound to honour the contract, and the beneficiary is not paid, is entitled to sue the defendant for the moneys payable under that policy without the production of any letters of administration of the estate of the deceased.

Further, I find that s. 44 of the Insurance Act 1963, is a new provision having been inserted into this Act by Act A546/1983 gazetted on 17 February 1983. The purpose of s. 44 of the Insurance Act is no doubt to facilitate and expedite payment by an insurer of any money due under a life policy to a 'proper claimant' without the need for the claimant to first obtain any letters of administration. This section would, I believe, apply where the deceased policy owner either had not appointed and named any beneficiary in the policy to receive the policy money upon his death in which case the policy money would go to his estate, or he had specifically stated in the policy that the policy money should go to his estate when he died. In that event, the insurer is nevertheless authorised by this section to pay out the policy money to a 'proper claimant' as described under s. 44(5) of the Insurance Act, the payment being subject to s. 44(2) and the Insurance (Payment of Life Policy Moneys) Regulations 1983.

In this case the deceased policy holder had expressly appointed and named the plaintiff who is his mother to be the beneficiary to receive the policy money after his death. That policy was taken by the deceased after his marriage. His intention is clear that the policy money should be paid to his mother, and to ensure that his wife and child would not be left with nothing, he had taken out another life policy wherein he appointed and named his wife and child as the beneficiaries.

The policy money in Policy No. 847798-2 should be paid by the defendant to the plaintiff. Whether that money attracts any estate duty has not been argued before me by the two learned Counsels representing the parties. As such this question should be referred to the Collector of Estate Duty.

For the reasons stated, I answer the questions posed in the originating summons as follows:

a) affirmative.

b) affirmative.

c) Payment to be made by the defendant to the plaintiff.

As regards (c) in the event of estate duty being leviable on the sum to be paid to the plaintiff, that duty should be paid out of the moneys due to the plaintiff. As such, the defendant should take action under s. 44(2) by giving 14 days' written notice by registered post to the Collector of Estate Duty with such particulars as may be required by the Collector. The defendant should now pay 90% of the moneys payable to the plaintiff under life policy No. 847798-2.

Since the moneys payable by the defendant under the two policies had been deposited with the Official Administrator, they should be refunded to the defendant for payments to the beneficiaries named in the policies.

I also awarded costs to be paid by the defendant to the plaintiff.

Also found at [1991] 1 CLJ 141